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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND)	
RULE 15.1(j) OF THE)	Supreme Court No. R-16-0035
ARIZONA RULES OF)	
CRIMINAL PROCEDURE)	Petitioner's Reply
_____)	

Petitioner appreciates the thoughtful suggestions made by those who filed comments in this matter, however he recommends that his original rule change be adopted without further modification. Petitioner shared the comments with the members of the superior court criminal bench that originally suggested the need for this rule change, and those members were not persuaded that any of the comments warrant further changes to the rule.

Petitioner does not support expanding the proposed rule amendment to include images *related* to the crime charged, as recommended by the Prosecution Subcommittee of the State Bar Criminal Practice and Procedure Committee, because

that change would result in an overly-broad restriction on materials that could include inoffensive images.

Neither is Petitioner persuaded by the defense bar's comment that a § 13-1425 crime is less serious than child pornography. While the victim of a § 13-1425 crime initially may have consented to sharing his or her image with a particular individual; like child pornography, the victim of unlawful disclosure of an image depicting nudity or sexual activity does not consent to the distribution of that image to the world. As such, the image is contraband – as it is illegal to distribute the image to others. Therefore, the discovery of same should be treated the same way as any contraband images are handled.

The defense argument also misstates the proposed rule and its application. The proposed rule would not forbid review, examination, or even distribution of the image. It merely permits courts to put reasonable conditions on the discovery and handling of the image so that there is no automatic disclosure of contraband. Without any restrictions, there are no safeguards for the victim – who did not consent to *any* form of distribution of the image at issue.

In its Comment, the Maricopa County Public Defender's Office argues (at pp. 4-6) that Rule 15.1(j) was intended *only* to regulate disclosure of images relating to child pornography, which is codified in Chapter 35.1, and not crimes involving adult victims, such as criminal voyeurism, A.R.S. § 13-1424, and the newly-classified

offense under § 13-1425, which are both codified in Chapter 14. The comment also asserts that the rule change is inconsistent in its treatment of discovery relating to similar sex crimes in Chapter 14.

This Court has approved other recent rule change petitions that minimized public disclosure of the identities and case details relating to sex crime victims, *see, e.g.,* Supreme Court No. R-08-0039, amending Supreme Court Rule 123(g)(1)(D)(ii)(h) and (E) (i)&(iv)(prohibiting online access to case documents from Chapters 14 and 35.1 crimes), and A.R.Crim.P. 2.3(b)(requiring prosecutors to alert the court when they file complaints involving Chapter 14 and 35.1 charges); and Supreme Court No. R-12-0004, which amended various criminal, juvenile, and Supreme Court rules to restrict use of victims' full names in cases brought under Chapters 14 and 35.1. The instant petition is another incremental step toward greater protection of these victims, without regard to their age, and was not intended as a comprehensive solution to the problem of public disclosure of sex crime materials.

RESPECTFULLY SUBMITTED this ____ day of October, 2016.

By /S/
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